

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN L. CRUISE, JR., BRIAN CONRAD,	:
KENNETH J. DIBBLE, MATTHEW A. EIRICH,	:
MICHAEL KOLOGY, PETER J. KROL,	:
EDGAR VELLOTTI,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
MICHAEL J. DOYLE, as General Chairman, LOCAL	:
DIVISION 9, LOCOMOTIVE ENGINEERS,	:
ASSOCIATION OF COMMUTER RAIL EMPLOYEES,	:
LOCAL DIVISION 9, LOCOMOTIVE ENGINEER	:
ASSOCIATION OF COMMUTER RAIL EMPLOYEES,	:
and MTA METRO-NORTH RAILROAD,	:
	:
Defendants.	:
	:
----- x	

**DECLARATION OF
VINCENT F. O'HARA IN
SUPPORT OF DEFENDANT
ACRE'S MOTION FOR
JUDGMENT ON THE
PLEADINGS**

07-CV-3940
(Pauley, J)
(Pitman, MJ)

I, Vincent F. O'Hara, an attorney admitted to practice in this Court and the Courts of New York State, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the attorney of record for the Defendants Michael F. Doyle, sued herein as Michael J. Doyle, as General Chairman, Local Division 9, Locomotive Engineers, Association of Commuter Rail Employees, and Local Division 9, Locomotive Engineer Association of Commuter Rail Employees (collectively "ACRE") in this action and a partner of the law firm of Holm & O'Hara LLP.
2. I am personally familiar with all of the facts and circumstances underlying this action.
3. This declaration is made on personal knowledge in support of Defendant

ACRE'S Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) in this action for the purpose of placing before the Court true copies of the pleadings, the collective bargaining agreement between ACRE and METRO-NORTH with amendments, and the ACRE Constitution which are referenced in Plaintiffs' First Amended Complaint and ACRE'S motion pursuant to FED. R. CIV. P. 12(c) submitted herewith.

4. Attached hereto as "Exhibit A" is a true copy of the First Amended Complaint filed by John L. Cruise, Jr., Brian Conrad, Kenneth J. Dibble, Matthew A. Eirich, Michael Kology, Peter J. Krol, and Edgar Vellotti on January 22, 2008 in the United States District Court for the Southern District of New York.

5. The Brotherhood of Locomotive Engineers ("BLE") and MTA Metro-North Railroad ("METRO-NORTH") are parties to a collective bargaining agreement effective January 1, 1995 through December 31, 1998 ("CBA").

6. Attached hereto as "Exhibit B" is a true copy of the CBA between defendants METRO-NORTH and the BLE.

7. The CBA is cited in paragraph "12" of the First Amended Complaint and is proper for consideration by this Court on Defendant's Motion for Judgment on the Pleadings.

8. The BLE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 1999 through December 31, 2002, amending and extending effective date of the CBA.

9. Attached hereto as "Exhibit C" is a true copy of the Memorandum of Understanding for the period January 1, 1999 through December 31, 2002 between METRO-NORTH and the BLE.

10. ACRE is the successor representative organization to the BLE on the

Metro-North Railroad.

11. Defendants ACRE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 2003 through December 31, 2006, amending and extending effective date of the CBA.

12. Attached hereto as "Exhibit D" is a true copy of the Memorandum of Understanding for the period January 1, 2003 through December 31, 2006 between METRO-NORTH and ACRE.

13. Defendants ACRE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 2007 through June 15, 2010, amending and extending effective date of the CBA.

14. Attached hereto as "Exhibit E" is a true copy of the Memorandum of Understanding for the period January 1, 2007 through June 15, 2010 between METRO-NORTH and ACRE.

15. Defendants METRO-NORTH and ACRE were bound by the CBA during the period 2003 through the time of filing this action on May 21, 2007 ("relevant period") by operation of Exhibits "C" through "E."

16. As members of ACRE, PLAINTIFFS are subject to the provisions of the CBA during the relevant period by operation of Exhibits "C" through "E."

17. Attached hereto as "Exhibit F" is a true copy of the Summons and Complaint filed by John L. Cruise, Jr., Brian Conrad, Kenneth J. Dibble, Matthew A. Eirich, Michael Kology, Peter J. Krol, and Edgar Vellotti on May 21, 2007 in the United States District Court for the Southern District of New York.

18. Attached hereto as "Exhibit G" is Defendant ACRE'S Answer filed on

February 4, 2008.

19. Attached hereto as "Exhibit H" is the ACRE Constitution.

20. Based upon this Declaration and Defendant ACRE'S Motion for Judgment on the Pleadings, Defendants Michael F. Doyle, sued herein as Michael J. Doyle, as General Chairman, Local Division 9, Locomotive Engineers, Association of Commuter Rail Employees, and Local Division 9, Locomotive Engineer Association of Commuter Rail Employees respectfully request that judgment be rendered in favor of ACRE and the Complaint be dismissed.

Dated: New York, New York
May 23, 2008

Respectfully submitted,

HOLM & O'HARA LLP
Attorneys for Defendants
Michael F. Doyle, sued herein as Michael J.
Doyle, as General Chairman, Local
Division 9, Locomotive Engineers, and
Association of Commuter Rail Employees

By: /s/ Vincent F. O'Hara

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